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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

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CLERK OF COURT  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

In re: )  
)  
SHOOK & FLETCHER )  
INSULATION COMPANY, ) CASE NO. 02-02771-BGC-11  
)  
Debtor. )  
\_\_\_\_\_ )

**OBJECTION OF TRAVELERS CASUALTY AND SURETY  
COMPANY TO DEBTOR'S MOTION TO APPROVE  
NOTICE PROCEDURES FOR INDIVIDUAL ASBESTOS CLAIMANTS**

COMES NOW Travelers Casualty and Surety Company (f/k/a the Aetna Casualty and Surety Company, and hereinafter "Travelers"), a creditor of Shook & Fletcher Insulation Company ("Debtor"), and hereby objects to the Motion to Approve Notice Procedures for Individual Asbestos Claimants (the "Notice Procedures Motion") filed herein by the Debtor. In support of this objection, Travelers states as follows:

1. On April 8, 2002 (the "Petition Date"), the Debtor filed a voluntary petition for relief in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (this "Court"), pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

2. On the Petition Date, the Debtor also filed several "first-day motions" including the Notice Procedures Motion.

3. As described in the Notice Procedures Motion, there are approximately 80,000 individual creditors who have asserted pre-petition claims against the Debtor for asbestos-related injuries and whose claims have not been fully satisfied (such creditors are collectively referred to herein as the "Individual Asbestos Claimants"). According to the Debtor, over 20,000 of such claims have been resolved through settlements that have not been fully funded by the Debtor. Most of the remaining 60,000 claims of the Individual Asbestos Claimants have been settled pursuant to the "Claimants Agreement" described in the Debtor's proposed Disclosure Statement.

4. The Debtor proposes in the Notice Procedures Motion to limit significantly the notice to the Individual Asbestos Claimants that is otherwise required by Federal Bankruptcy Rule of Procedure 2002(g), which provides as follows:

All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later. If a different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend has been given.

5. Rather than complying with the requirements of Rule 2002(g), the Debtor proposes to serve notices to the approximate 150 attorneys known to the Debtor to represent one or more Individual Asbestos Claimants, in lieu of serving notice directly on the Individual Asbestos Claimants. Nothing in the Notice Procedures Motion or otherwise in the record of this bankruptcy case indicates that such attorneys are "authorized agents" of the Individual Asbestos Claimants for purposes of Rule 2002(g).

6. The primary authority cited by the Debtor in support of the Notice Procedures Motion is *In re Grand Union Co.*, 204 B.R. 864 (Bankr. D. Del. 1997). However, the facts of *Grand Union* are substantially different from the circumstances in this matter and its holding is inapposite to the relief requested here. In *Grand Union*, the bankruptcy court addressed whether the chapter 11 debtor provided proper notice of the bar date to three unsecured creditors that were involved in pre-petition personal injury litigation with the debtor. Bar date notices were mailed directly to the three creditors and not to their attorneys of record in the pre-petition litigation. Proofs of claim were not timely filed by the three creditors. After the bar date, the creditors filed motions for leave to file late proofs of claim on grounds of excusable neglect.

7. Based upon the foregoing circumstances, the *Grand Union* court reasoned that the issue before it was “whether Grand Union, a chapter 11 reorganizing debtor, has a duty to furnish the claimants’ attorneys with the bar date notice when Grand Union, prior to its commencement of the case had specific knowledge of the claimants’ representation in pursuing their personal injury claims against it and there had been a series of pre-petition communications between Grand Union’s agents and the claimants’ attorneys exploring possible resolution of the claims.” 204 B.R. at 870-71.

8. The *Grand Union* court concluded that the notice of the bar date should have been mailed to the creditors and to their litigation counsel. This decision was based upon a variety of factors including the following: (a) the claimants were not sophisticated; (b) the attorneys had been engaged by the claimants to negotiate a resolution or to litigate their claims; (c) the claimants had a reasonable expectation that their litigation attorneys also received the bar date

notice; (d) the bar date notice was “a complex legal document . . . that was not easily comprehensible by a lay-person”; (e) it was not easily determined if the bar date notice applied to the creditors; (f) after the bar date passed and the proofs of claim was not filed, the debtor informed the attorneys for the creditors (not the creditors themselves) that the claims of their clients had been discharged; and (g) sending the bar date notice to the creditors and not to their attorneys “amounted to a trap for the unwary.”

9. In the Notice Procedures Motion, the Debtor does not propose to provide notice to the Individual Asbestos Claimants and their respective personal injury lawyers as was contemplated in *Grand Union*. Rather, the Debtor proposes to provide notice to such lawyers in lieu of notice to the Individual Asbestos Claimants. Such a procedure raises significant issues not only under Rule 2002(g), but also with respect to the due process that each Individual Asbestos Claimant is entitled to receive. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The notice procedure proposed by the Debtor in this case was neither requested nor contemplated in *Grand Union*. In any event, the procedural and constitutional concerns that were raised in *Grand Union* are clearly resolved by providing notice to both the Individual Asbestos Claimants and the attorneys.

10. Moreover, the holding of *Grand Union* is at odds with the reasoning employed by other courts that have more carefully examined the requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. See e.g. *In re Friel*, 162 B.R. 645, 648 (Bankr. W.D.N.Y. 1994) (attorneys’ filing of notice of appearance “does not satisfy the directional requirements of Rule 2002(g) as to where the notices required to be sent by Rules 2002 and 3002

are to be sent to that creditor”); *Linder v. Trump’s Castle Assoc.*, 155 B.R. 102, 105 (Bankr. D.N.J. 1993) (general rule that service on pre-petition lawyer of creditor satisfies notice requirements is not necessarily applicable for personal injury claimants since “[I]n this era of increasing legal specialization, there may be good plaintiffs’ lawyers who feel that a matter should be handled by bankruptcy counsel after the defendant has filed for protection under the Bankruptcy Code”).

11. The reasons advanced by the Debtor for proposed drastic notice limitations (number of creditors, costs, administrative burden, addresses and identifying information, etc.) are not novel to contemporary bankruptcy reorganizations. Indeed, many chapter 11 reorganizations are the direct result of a large volume of tort claims. Moreover, the other Delaware authorities cited by the Debtor for the proposition that notice can be curtailed do not extend that concept to fundamental matters such as notice of hearings on approval of a disclosure statement and confirmation of a plan as proposed by the Debtor in the Notice Procedure Motion.<sup>1</sup>

12. By providing notice directly to the Individual Asbestos Claimants, the name, address and other information about these creditors will not be within the exclusive province of the Debtor and the personal injury attorneys. Such information is relevant not only to the solicitation issues that arise in a chapter 11 case, but is also highly relevant to the claims

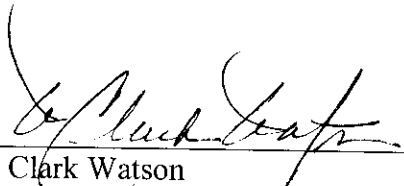
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<sup>1</sup> This Motion highlights concerns that Travelers has over the nature and extent of the Debtor’s alleged pre-bankruptcy solicitation that it apparently will seek to use in connection with confirmation. As detailed in paragraph 10 of the Notice Procedures Motion, Shook distributed its solicitation materials and obtained votes on its proposed Plan from *counsel* for the asbestos claimants, *not the actual claimants*. Applicable law will require evidence that such counsel was authorized to cast plan ballots on behalf of their respective counsel. See *In re Southland Corp.*, 124 B.R. 211 (Bankr. N.D. Tex. 1991).

resolution procedure described in the plan of reorganization proposed by the Debtors. Such information should be readily available to Travelers and other parties in interest.

WHEREFORE, PREMISES CONSIDERED, Travelers respectfully requests that this Court sustain its objection to the Debtor's Motion to Approve Notice to Individual Asbestos Claimants and deny the entry of the relief requested by the Debtor. Furthermore, Travelers respectfully requests that this Court grant such additional and further relief as it deems necessary.

Respectfully submitted, the 16<sup>th</sup> day of April, 2002.



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## CERTIFICATE OF SERVICE

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by placing the same in the U.S. Mail, postage pre-paid, first class on this the 16th day of April, 2002.

  
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